

## DECLARATION UNDER 37 C.F.R. §1.131

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**Applicant: Steven J. Brown *et al.*

Serial No.: 09/965,201

Filed: 25 September 2001

For: "IDENTIFICATION OF MODULATORY MOLECULES USING  
INDUCIBLE PROMOTERS "**DECLARATION UNDER 37 C.F.R. §1.131**Mail Stop: Patent Application  
Commissioner for Patents  
U.S.P.T.O.  
P.O. Box 1450  
Alexandria VA, 222313-1450

Dear Sir:

I, David B. Waller, declare that:

I am a registered patent agent in good standing before the United States Patent and Trademark Office (No. 43,978) and the agent of record in the above-identified patent application prior to May 2001;

claims 1-42 are currently pending in view of a restriction requirement filed 26 July 2004;

all of the actions, events and observations described in this declaration occurred in the United States, prior to May 2001;

the exhibits listed in Table below are true and accurate copies of documents demonstrating that conception of the invention disclosed in the above-identified patent application was made prior to May 2001;

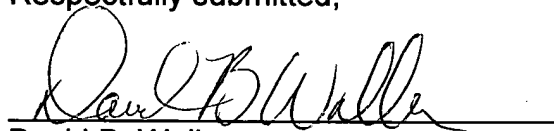
Exhibit	Description
1	A redacted Confidential Disclosure agreement between Axiom Biotechnologies and David B. Waller executed at the time of disclosure of the invention and prior to May 2001.
2	The first and last page of a redacted letter to the Pandi Veerapandian (Chief Executive Officer of Axiom Biotechnologies) providing an analysis of the patentability of the invention dated prior to May 2001.
3	A redacted e-mail and attached redacted letter to the inventor providing a set of draft claims for review based on the invention prior to May 2001.

that the exhibits listed in the table demonstrate a continued due diligence from conception by the inventor to the filing of the application prior to May 2001;

that all statements made herein of my own knowledge are true, that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both (18 U.S.C. §1001), and may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date: 4 March 2005



David B. Waller  
Patent Agent of Record

Please forward all future correspondence to:

David B. Waller  
David B. Waller & Associates  
5677 Oberlin Drive, Suite 214  
San Diego, CA 92121  
Telephone: (858) 457-2014  
Facsimile: (858) 457-2308  
E-Mail: [dwaller@starnetdial.net](mailto:dwaller@starnetdial.net)

Exhibit 1

CONFIDENTIAL DISCLOSURE AGREEMENT

SUBJECT

Matrix Profiling: A process for improved drug delivery and  
Use of inducible gene expression systems for identification of drug target modulators

This AGREEMENT is entered into as of [REDACTED] between David B. Waller ("RECIPIENT"),  
having a place of business at 11404 Sorrento Valley Road, Suite 104 San Diego, CA 92121 and Axiom  
Biotechnologies, Inc. ("DISCLOSING PARTY"), having a place of business at 3550 General Atomics  
Court San Diego, CA 92121.

RECITALS

WHEREAS, DISCLOSING PARTY has developed certain Proprietary Technology relating to the  
invention described above (see SUBJECT):

WHEREAS, RECIPIENT desires to receive information relating to DISCLOSING PARTY's  
Proprietary Technology in order to evaluate the Proprietary Technology in order to provide consulting  
services to DISCLOSING PARTY regarding patenting this technology;

WHEREAS, RECIPIENT appreciates that DISCLOSING PARTY has expended money and effort  
to establish a proprietary position with respect to the developments it has made and that DISCLOSING  
PARTY considers these developments and information pertaining thereto to be its proprietary property;  
and

WHEREAS, DISCLOSING PARTY is willing to demonstrate its Proprietary Technology and/or  
to reveal to RECIPIENT certain technical information relating to its proprietary property on a confidential  
basis,

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants, terms and  
conditions hereinafter expressed, DISCLOSING PARTY and RECIPIENT agree as follows:

1. A confidential relationship is hereby established between the parties.
2. "Proprietary Technology" shall mean technical information and tangible materials  
relating to the above identified subject matter not previously disclosed to RECIPIENT including, where  
appropriate and without limitation, any information, patent disclosures, patent applications, structures,  
models, compositions and apparatus relating to the same disclosed in writing (or if oral, confirmed in  
writing within 30 days) by DISCLOSING PARTY to RECIPIENT or obtained by RECIPIENT through  
observation or examination of such, but only to the extent that such information or developments are  
maintained as confidential by DISCLOSING PARTY.
3. RECIPIENT shall preserve as confidential and shall not use any of such Proprietary  
Technology except as necessary in connection with RECIPIENT'S evaluation of such Proprietary  
Technology and shall not disclose or permit disclosure of same to anyone other than employees,  
contractors or agents of RECIPIENT who are bound by written agreements with RECIPIENT to maintain  
such Proprietary Technology in confidence. Additionally, RECIPIENT agrees that he will not use the  
Proprietary Technology to advance, further, or otherwise improve his proprietary position, if any, with  
respect to this subject matter.

4. RECIPIENT shall have no liability to DISLCOSING PARTY with respect to use, or disclosure to others not party to this Agreement, of such Proprietary Technology which RECIPIENT can establish to,

- (a) have been publicly known,
- (b) have been publicly known, without fault on the part of the RECIPIENT, subsequent to disclosure by DISLCOSING PARTY of such Proprietary Technology to RECIPIENT,
- (c) have been otherwise known by RECIPIENT prior to communication by DISLCOSING PARTY to RECIPIENT of such Proprietary Technology, or
- (d) have been received by RECIPIENT at any time from a source other than DISLCOSING PARTY lawfully having possession of such Proprietary Technology.

In addition, any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the possession of RECIPIENT. Only if the combination itself and its principle of operation are in the public domain or in the possession of RECIPIENT shall the combination be considered to fall within the exceptions of this paragraph.

5. After ninety (90) days from the date of this Agreement or the actual disclosure of Proprietary Technology, whichever is later, RECIPIENT agrees to promptly return all tangible items relating to the Proprietary Technology, including all written material, photographs, models, compositions and the like made available or supplied by DISLCOSING PARTY to RECIPIENT, and all copies thereof, upon the request of DISLCOSING PARTY, except at his option for one copy to be maintained by his legal counsel for reference purposes only to verify compliance with this Agreement. RECIPIENT further agrees to identify those persons to whom the Proprietary Technology that is the subject of this Agreement was disclosed upon request of DISLCOSING PARTY.

6. The obligation of RECIPIENT of nondisclosure and non-use shall continue for a period of five (5) years from the date hereof at which time it will cease.

7. This Agreement shall not be construed to grant any license or other rights except as specified herein.

8. RECIPIENT may not assign this Agreement.

9. DISLCOSING PARTY warrants that, to the best of its knowledge, it is the owner of the Proprietary Technology. DISLCOSING PARTY makes no other warranty relating to the Proprietary Technology and the use to be made thereof by RECIPIENT and disclaims all implied warranties.

10. RECIPIENT'S evaluation of the Proprietary Technology shall be at its own risk.

11. This Agreement is intended to be severable. Should any part or provision of this Agreement be found to be unenforceable or invalid for any reason, the remaining parts and provisions will remain in effect.

12. The Agreement represents the entire agreement between the parties regarding the subject matter hereof.

ACCEPTED AND AGREED TO:

DISLCOSING PARTY

By: 

Date 

RECIPIENT

By: 

Date 


Exhibit 2

# Patent Solutions

*Specializing in Biotechnology*

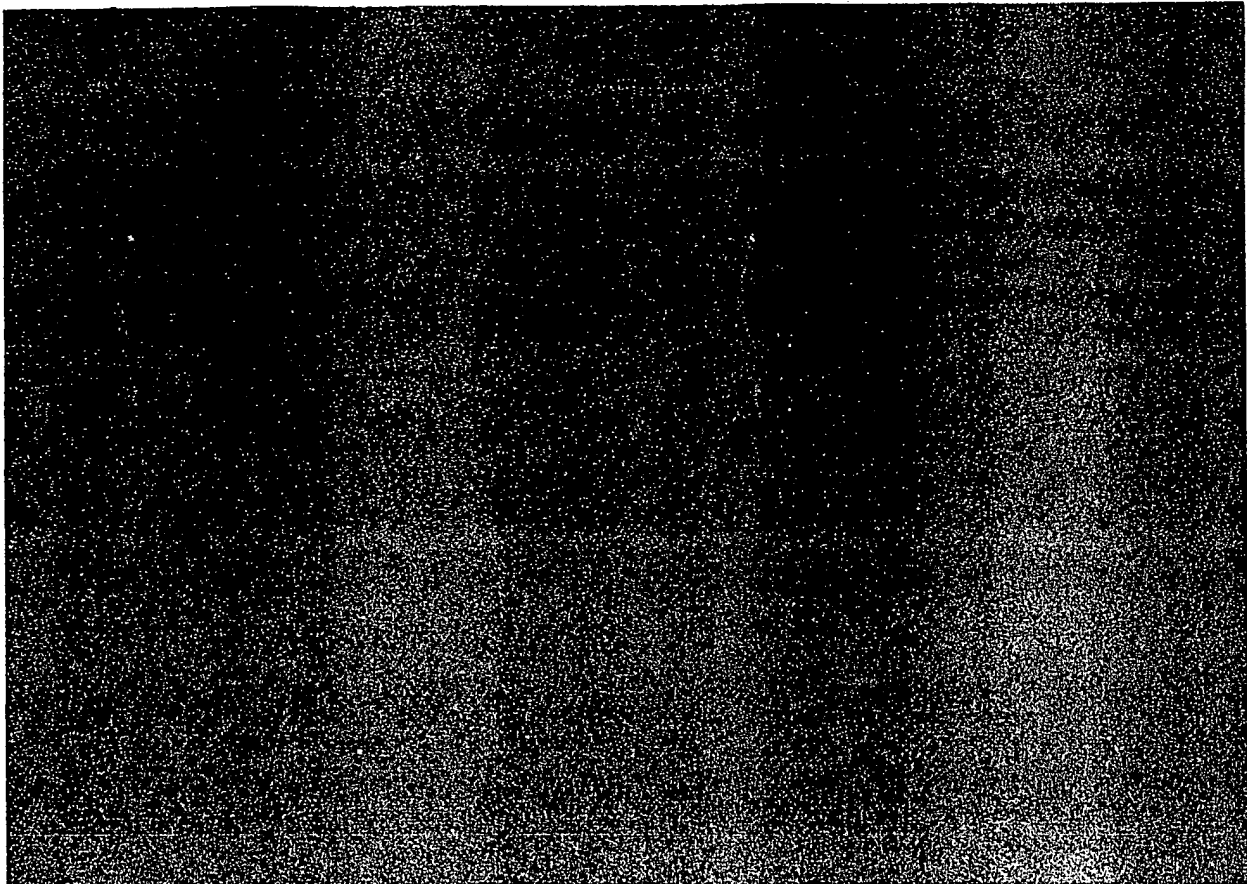
11404 Sorrento Valley Road, Suite 104, San Diego, CA 92121  
Phone: (858) 450-1357 FAX: (858) 450-2188 E-Mail: [dwaller@cnmnetwork.com](mailto:dwaller@cnmnetwork.com)

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Pandi Veerapandian  
Axiom Biotechnologies, Inc..  
3550 General Atomics Court  
San Diego, CA 92121

Dear Dr. Veerapandian;

You have requested that Patent Solutions perform an analysis to determine if the invention developed by Dr. Damien Dunnington regarding the "Use of Inducible Gene Expression Systems for Identification of Drug Target Modulators" maybe patentable. It is important to



If you have any questions please contact me at (858) 450-1357.

Sincerely;

A handwritten signature in black ink, appearing to read "David B. Waller". The signature is fluid and cursive, with the first name "David" and last name "Waller" clearly distinguishable.

David B. Waller  
President

**David Waller**

**Exhibit 3**

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From: David Waller <dwaller@patentsolutions.org>  
To: damien dunnington <damien@axiombio.com>  
Sent: [REDACTED]  
Attach: Axpaf1claims.doc  
Subject: Draft Claims

Dear Damien,  
As requested Patent Solutions has prepared the following claims for your review and comments, see attached.  
Please contact me if you have any questions (858) 450-1357.  
David B. Waller

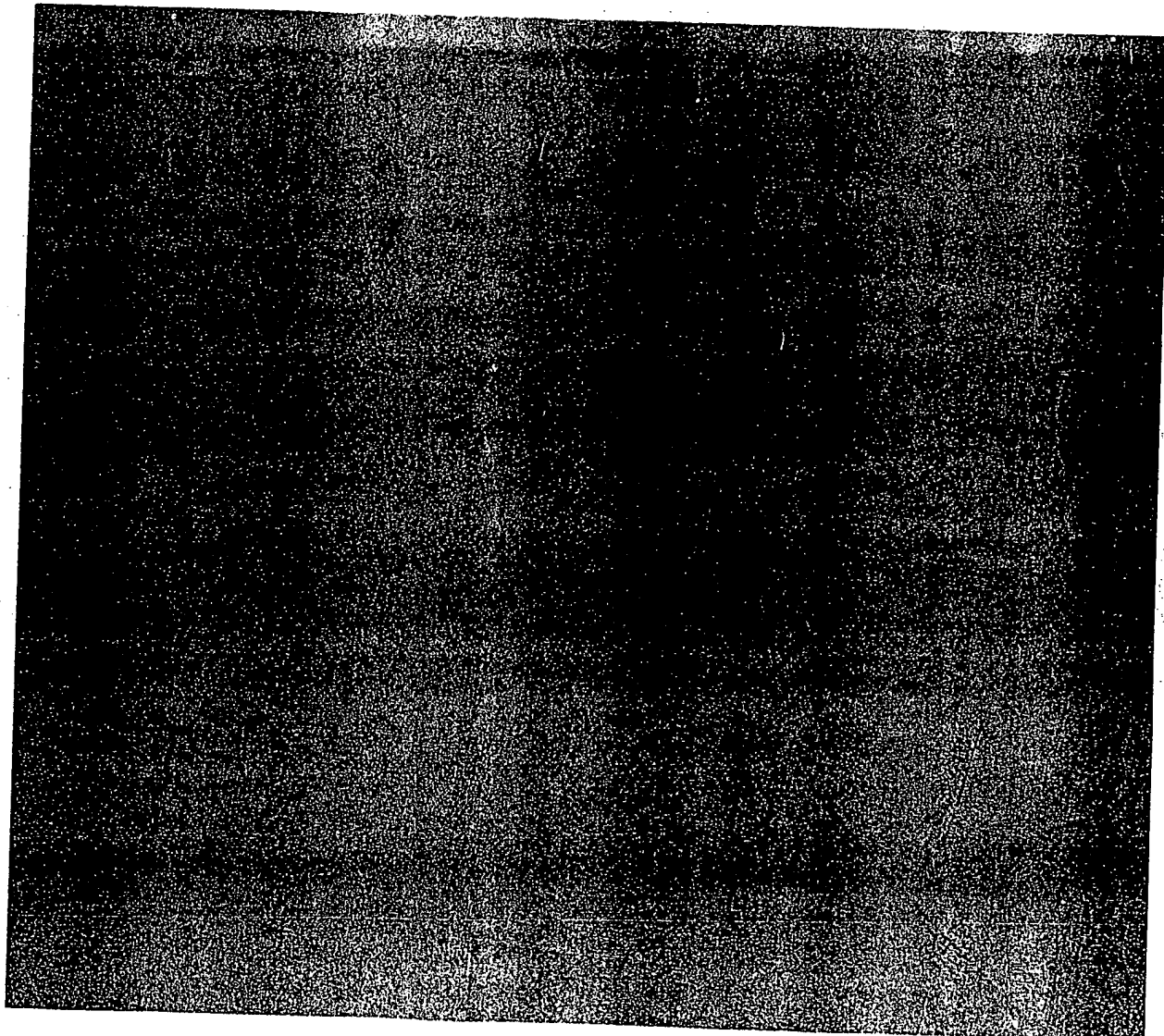
# Patent Solutions

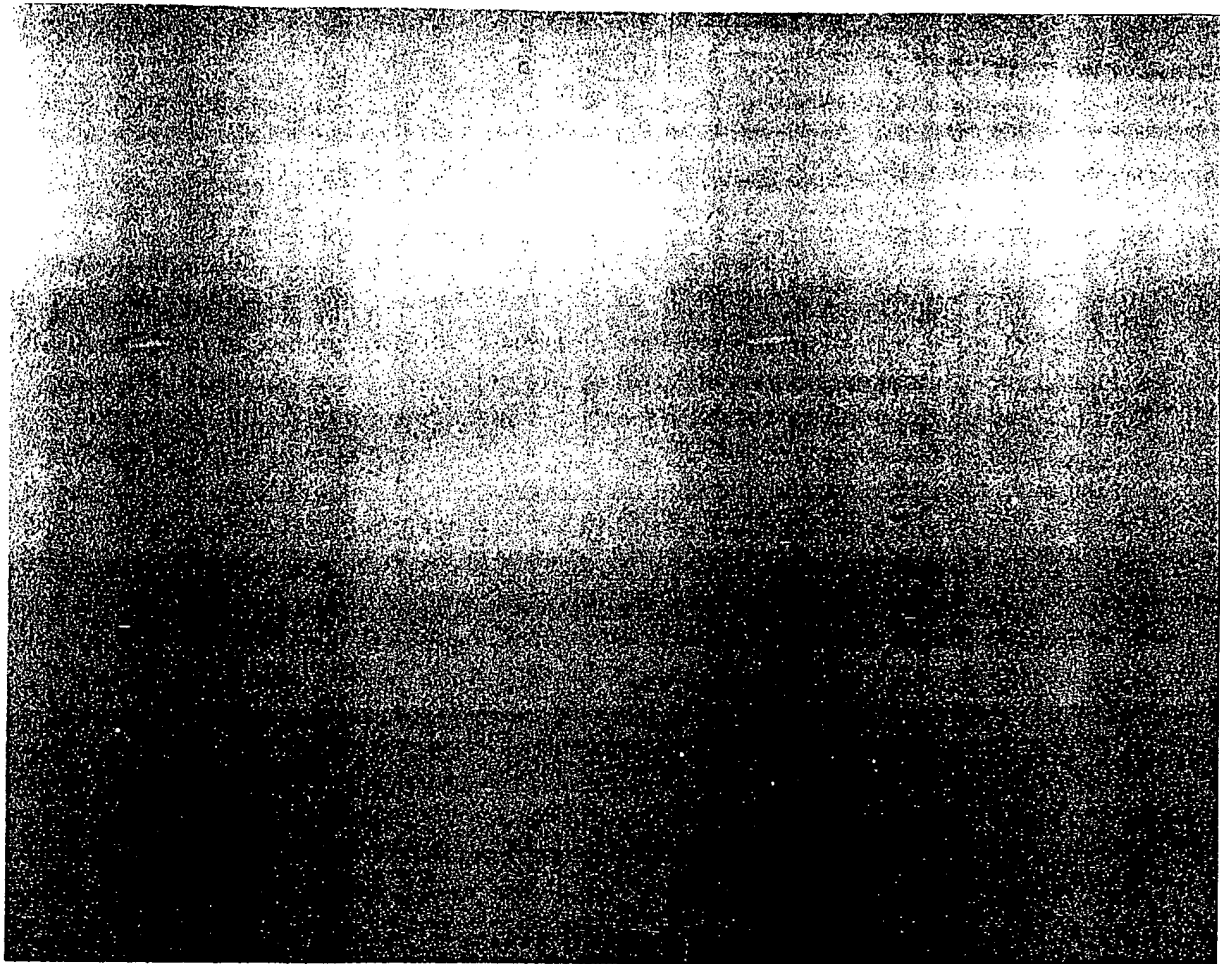
*Specializing in Biotechnology*

11404 Sorrento Valley Road, Suite 104, San Diego, CA 92121  
Phone: (858) 450-1357 FAX: (858) 450-2188 E-Mail: [dwaller@cnmnetwork.com](mailto:dwaller@cnmnetwork.com)

[REDACTED]  
Damien Dunnington  
Axiom Biotechnologies, Inc..  
3550 General Atomics Court  
San Diego, CA 92121

Dear Dr. Dunnington;  
As per our discussion [REDACTED] Patent Solutions has prepared the following set of draft claims for your review and comments:





Information enclosed in brackets identifies the information needed to complete the claim. Please review these claims carefully to assure that they fully encompass the scope of your invention and provide as much of the information as possible to complete the claims. If you have any questions please contact me at (858) 450-1357.

Sincerely;

David B. Waller  
President

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